

JOLT TO AUTOISTS

Supreme Court Affirms a Verdict for Damages.

Girl Hurt by Being Thrown from Horse.

FRIGHTENED AT CAR.

J. N. McDonald, Motorist, Paid No Attention to Animal.

Findings in Hutchinson Ouster Case Are Approved.

Any person having control or charge of an automobile has the right to drive it upon any public street or highway but in so doing he must exercise every reasonable precaution to prevent the frightening of horses and to insure the safety of any person riding or driving the same. If he does not do so he is liable for heavy damages to the person or property injured as a result of his carelessness. This is the decision of the supreme court in the case of J. N. McDonald vs. Grace Yoder, appealed from Neosho county. Grace Yoder recovered a judgment for damages in the sum of \$3,000 for personal injuries received through McDonald's carelessness in driving his auto. The supreme court, in passing on this case, affirmed the judgment of the lower court, but in its decision merely passed upon the law in the case, whether or not McDonald had exercised due precaution in driving his machine and not upon the large amount of the damages assessed by the jury in the case in the first place. The amount of the damages was not involved in the appeal nor made a point in seeking a reversal of the lower court.

Miss Yoder and two other girls were riding horseback in the little town of Earlton on the main street when McDonald in his machine turned a corner 250 feet west of the girls and proceeded directly toward them at a speed of from ten to thirteen miles an hour. Miss Yoder's horse became frightened and she threw herself to the ground and received severe injuries. In summing up its decision against the autoist in the case the court comments as follows: "An auto is recognized in law as a proper vehicle of transportation upon the public highways of the state. The operation of the machine, however, is subject to the law of the road. It is subject to the same rules as the person having the control of an automobile in the exercise of reasonable precaution to prevent the frightening of horses or the injury of persons riding or driving the same, especially in localities where autos are not much used." The fact that the autoist in this case continued to drive his machine forward at unabated speed after Miss Yoder's horse was frightened appeared to be the main point against him in the decision of this case.

In approving the commissioner's findings of fact in the noted ouster suit against J. F. Harsha, mayor of Hutchinson, the supreme court today held that the chief law question involved in this case was whether or not the case against Mayor Rose of Kansas City. The court found that Harsha had full notice and cognizance of the violations of the law in Hutchinson and that he failed to notify the county attorney as by law provided and thereby forfeited his office. The costs in the case were assessed against defendant and the city of Hutchinson.

In passing upon the culpability of Hutchinson's mayor in this case and making application of law the court held that when an act of the legislature contains a section which prescribes the qualifications required of persons to hold certain offices it will not be presumed that such omission to enforce the law occurred by mistake or ignorance of the matter in question. The court's opinion would seem to require that public officials should vigorously enforce the law in their communities and continued failure to do so is sufficient to forfeit their offices. The court stated in its decision that it saw no good reason to disturb the decision in the Rose case from Kansas City.

In the case of the Western Union Telegraph Co. vs. J. D. Bodkin, appealed from Labette county, the court held that the defendant was entitled to exemplary damages because of plaintiff's failure to transmit a death message and the plea that of the company through the testimony of their operators that they did not receive the message was held an insufficient ground upon which to dismiss the case. The defendant had filed the message and paid tolls thereon and this fact was sufficient to throw the burden of prompt transmission upon the company. However, the court held that the \$500 damages allowed by the lower court were excessive and the company is allowed to remit one-half of this amount. Mr. Bodkin, the defendant in the original case in the lower courts, filed a message and paid the charges thereon to inform his father of the shipment of the remains of a deceased brother.

The court passed upon three cases

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from the Shawnee district court, two of which were reversed and one affirmed.

In the case of Sarah Kiehl vs. G. M. Jamison the supreme court held that the plaintiff's land in Park Place, an addition to this city should be opened for the passage of the Union avenue road through the tract and the fact that plaintiff had closed up the land and kept it so for a good many years did not prevent the opening of the road at any time under due process of law.

In the case of Frank M. Boyles vs. Frank P. Bradley the lower court in favor of Bradley was reversed and the case remanded for a new trial. The possession of what in the value of \$118 was involved in this litigation and the result depended upon the terms of an oral lease. Bradley leased a farm to Frank Boyles for crop rent and when they came to divide the crop grown on the place it was found that they did not agree as to the terms of the lease.

The third Shawnee case was that of Ginter vs. Ginter and in this case the lower court was affirmed. In this case Louis Ginter, by the terms of his will, left one-half of his property to his wife and small bequests to other members of his family and the remainder of his estate to his son Frederick and the latter was named as executor. After the will had been probated John Ginter, another son, brought suit to have the will set aside on the grounds that of undue influence and fraud practiced upon his father by Frederic Ginter. The court held that the will of the elder Ginter was a perfectly natural will and declined to set it aside.

The decision is a lengthy one, taking some twenty-five typewritten pages and goes into the case at length in detail. It is held that to destroy the validity of a will undue influence must amount to coercion, compulsion or constraint, which destroys the testator's free agency and by overcoming his power of resistance obliges him to adopt the will of another instead of exercising his own. Suspicion, conjecture or possibility of fraud has induced a will is not sufficient to support a verdict to that effect. Power, motive and opportunity to exercise undue influence do not alone authorize the inference that such influence has in fact been exercised.

In deciding that case of Jacob L. Criger vs. C. V. Shepherd, the supreme court held that the owner of intoxicating liquor in another state cannot come into this state or send his agents here and in defiance of the laws of this state, carry on the business of soliciting orders for intoxicating liquors to be shipped from such other state without incurring the penalties of law, nor can payment of commissions and the local agent be enforced by law. Criger, in this case, is a wholesale liquor dealer of Kentucky and Shepherd is his agent, and is suing for commission on orders.

In deciding that case of the city of Leavenworth vs. Ralph A. Ewing, the latter an agent of the United States Express company, the supreme court held that the city could enforce and collect a license tax, or occupation tax from the express company, and the fact that the company did an interstate business did not have any particular bearing in the matter at all, as the fact that the company received packages from persons in that city consigned to persons in this state made the company liable for the occupation tax.

The supreme court held today that where a person procures the signature of another party to a lease or document for the fraudulent representation that even though the party signing the paper can read, he is not necessarily bound by its provisions in the fact of a previous oral agreement to contrary stipulations. This decision was made in the case of T. O. Tanton vs. L. R. and E. L. Martin, appealed from Sedgewick county. In this section plaintiff sought to recover \$200 additional from defendants as cash rent for a farm in addition to crop rent. The latter had signed a lease in which this \$200 provision had been inserted after an oral agreement had been made as to crop rent. The court held that defendants were not bound to pay this sum, as their agreement to do so was obtained by fraud.

Supreme Court Decisions.

Opinions handed down by the supreme court on Saturday, April 10, 1909.

BY JOHNSTON, C. J.

W. B. Klier vs. Frank Wohlsch; error from Atchison county. Reversed and remanded for a new trial.

The Illinois Trust & Savings bank, trustee, vs. the City of Burlington; error from Coffey county. Reversed and remanded for a new trial.

Detlof Lobner vs. the Metropolitan Street Railway Co.; error from Wyandotte county common pleas. Reversed and remanded for a new trial.

Frank M. Boyles vs. Frank P. Bradley; error from Shawnee county. Reversed and remanded for a new trial.

T. O. Tanton et al., vs. L. B. Martin et al.; error from Sedgewick county. Affirmed.

Stephen S. Brown et al., partners, etc., vs. Mary K. Quinton, administratrix, etc.; error from Shawnee county. Reversed and remanded for a new trial.

Johnston, C. J., and Porter, J., dissenting.

The city of Leavenworth vs. Ralph A. Ewing; error from Leavenworth county. Affirmed.

BY BURCH, J.

J. H. Ginter vs. Fred Ginter et al.; error from Shawnee county. Affirmed.

Benjamin H. Sharp vs. George E. McCullin et al.; error from Ford county. Reversed and remanded. Benson dissenting.

Edward McKenna et al. vs. S. W. Campbell; error from Kingman county. Affirmed.

State of Kansas vs. David E. Bowden; original proceeding in quo warranto. Judgment entered for defendant.

Also in 1895, State vs. Snyder; 1896, State vs. Quinn; 1897, State vs. Neal; 1898, State vs. Richardson; 1899, State vs. McKnight; 1900, State vs. Wilson; 1901, State vs. Anderson, and 1903, State vs. Walsh, original proceedings in quo warranto; judgment entered for defendants.

BY MASON, J.

M. K. & T. Ry. Co. vs. F. Johnson, M. K. & T. Ry. Co. vs. H. McDowell, M. K. & T. Ry. Co. vs. John Sealy, et al.; motion to retax costs. Motions denied. Benson, J., not sitting, having been of counsel in case No. 1541.

A. J. Basye, et al. vs. The Paola Refining company, etc.; error from Miami county. Affirmed. Benson, J., not sitting, having been of counsel.

Stephen D. Canaday, et al. vs. Emma A. Davis et al.; error from Gray county. Affirmed.

E. Baxter vs. Jacob Krause; error from Marion county. Affirmed.

State of Kansas vs. A. Chibber; appeal from Saline county. Appeal dismissed.

In re Floyd Manning; original proceeding in habeas corpus. Petitioner remanded.

BY SMITH, J.

Mrs. L. E. Huey vs. J. C. Starr; error from Scott county. Reversed and remanded. Benson, J., not sitting.

Robert S. Hendricks vs. James C. Brooks; error from Rawlins county. Affirmed.

J. N. McDonald vs. Grace Yoder; error from Neosho county. Affirmed.

State of Kansas ex rel vs. J. P. Harsha, mayor, etc., et al.; original proceeding in mandamus. Peremptory writ allowed.

P. L. Martin et al. vs. J. F. Harsha, mayor, etc., et al.; original proceeding in mandamus. Peremptory writ allowed.

BY PORTER, J.

Sarah C. Kiehl vs. G. M. Johnson; error from Shawnee county. Reversed and remanded with directions to enter judgment for defendant on agreed statement of facts.

A. E. Comes et al. vs. W. M. Dabney et al., partners; error from Chautauqua county. Reversed and remanded for a new trial.

The Missouri Pacific Railway Co. et al. vs. H. B. Stone; error from Coffey county. Affirmed.

BY GRAVES, J.

Henry Cordova vs. S. H. Cushman; error from Crawford county. Affirmed.

The Kansas City Live Stock Commission Co. vs. the Bank of Hamilton; error from Brown county. Reversed and remanded for further proceedings.

J. P. Bauman & Sons vs. McManus Bros.; error from Harvey county. Affirmed. Porter, J., dissenting.

Hattie James vs. Jane Manning et al.; error from Wichita county. Affirmed.

The St. L. & S. F. Ry. Co. vs. Charles R. Justice; error from Johnson county. Reversed and remanded for further proceedings.

City of Hutchinson vs. George W. White; error from Reno county. Reversed and remanded for further proceedings.

BY BENSON, J.

State of Kansas, ex rel vs. Wm. J.

Lemp Brewing company; original proceeding in quo warranto; judgment of ouster entered against defendant.

P. M. Spain vs. H. S. Rakestraw; error from Graham county. Affirmed.

The Western Union Telegraph Co. vs. J. B. Bodkin; error from Labette county; modified by allowing the plaintiff to remit the sum of \$300 from the amount awarded; otherwise to be reversed and remanded for a new trial.

Cockerill Zinc Co. vs. Calvin Streets; error from Wilson county. Affirmed.

Jacob L. Criger, et al. vs. C. V. Shepherd; error from Barton county; reversed and remanded with directions to enter judgment for defendant on the findings.

Buck Stove & Range Co. et al. vs. C. C. Vickers, et al.; and Consolidated Steel & Wire Co. et al. vs. C. C. Vickers, et al.; error from Saline county. Affirmed. Graves, J., not sitting.

PER CURIAM.

J. H. Young, et al. vs. Isaac Shockey et al.; error from Dickinson county. Affirmed. (Dismissed as to Young and Muenzenmayer.)

S. S. King, et al. vs. Mary Mayhew; error from Atchison county. Affirmed.

John S. Downs vs. W. H. Rich; error from Wichita county; proceeding in error dismissed.

S. W. Shattuck, Jr., et al. vs. A. J. Weaver; error from Sedgewick county. Affirmed.

Hanford W. Kerr, et al. vs. Corydon W. Kerr, et al.; error from Wyandotte county common pleas; reversed and remanded for further proceedings.

Howard F. Martindale vs. S. A. Stoller; error from Lyon county. Reversed and remanded for a new trial. (Graves, J., not sitting.)

Jay Nichols vs. John W. Trueman; error from Greeley county; reversed and remanded with directions to enter judgment for the defendant.

Frank Erath vs. W. M. Glenn; error from Greeley county. Affirmed.

T. P. Tucker vs. Charles E. Gibson; error from Greeley county. Affirmed.

Wichita Railroad & Light company vs. W. R. W. Liebhart; error from Sedgewick county. Affirmed.

R. C. Webster, Jr., vs. Joe Stevenson; error from Ness county. Affirmed.

State of Kansas vs. J. P. Harsha; original proceeding in quo warranto; judgment of ouster entered against defendant.

State of Kansas ex rel vs. W. H. Dixon, et al.; original proceeding in quo warranto; judgment for is defendant.

State of Kansas vs. W. R. Burke; appeal from Atchison county. Affirmed.

IT MUST PASS ALDRICH.

Before Any Tariff Measure Can Be Enacted Into Law.

Washington, April 10.—The one man upon whom more than any one else depends the question of whether a satisfactory tariff bill is quickly formulated by congress is Senator Nelson W. Aldrich of Rhode Island. The Payne bill is the present topic of tariff discussion and largely and principally because the constitution requires tariff legislation to originate in the house and Aldrich is in the senate. Senator Aldrich has already said that the tariff revision bill he finally reaches the president it will be not in the form of the Payne bill, but in the form of the Aldrich bill.

BY BURCH, J.

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City of Hutchinson vs. George W. White; error from Reno county. Reversed and remanded for further proceedings.

BY BENSON, J.

State of Kansas, ex rel vs. Wm. J.

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Louis Van Dorp, Galvanized Iron Works, Topeka, Kans.
John Farmer, Real Estate & Loans, 467 Hewitt Ave., Wichita, Kans.
Cy Leland, Receiver Devlin Estate, Troy, Kans.
D. A. Bollinger, Cashier The Thayer State Bank, Thayer, Kans.
Frank Strain, Probate Judge, Phillips Co., Phillipsburg, Kans.
M. L. Campbell, Druggist, 422 Market St., Osage City, Kans.
E. E. Laird, Care of Wolf Pack Co., U. S. Government Office, Topeka, Kans.
C. Myers, Farmer, Windom, Kans.
J. M. Gilman, County Supt. Schools, Leavenworth, Kans.
A. H. Campbell, Atty., 115 West Broadway, Iola, Kans.
W. F. Muenzenmayer, Hwd., Junction City, Kans.
L. L. Coulter, Cashier Central State Bank, Geneseo, Kans.
William Smith, Postmaster, Galena, Kans.

GIRL GOT AWAY.

Miss Julia Johnson Has Thrilling Experience at Night.

Miss Julia Johnson had a thrilling escape last night on West Fifth street.

Miss Johnson was walking on West Fifth street on the way from her home on Tyler street, to the Swedish Baptist church at Fourth and Fillmore when she noticed that she was being followed by a man. When she had reached the alley on West Fifth street between Western avenue and Fillmore street, the man grabbed her. Miss Johnson shrieked and ran into the house of A. Goodman at 912 West Fifth street, where she told her story, and then fainting. Her assailant when she shrieked ran up the alley and escaped. The men in the neighborhood conducted a search party but were unable to find the man.

When the man accosted Miss Johnson, he said something to her, which she thinks was "Won't you go with me." He was medium sized. He talked with a broken accent and Miss Johnson said he looked something like a Mexican. She is sure he is a foreigner.

Miss Johnson is a cartoon maker and is employed by the Continental Creamery company. She says that on two previous occasions she has noticed a man following her, but that previously he threatened no violence and she was able to reach her destination in time to prevent an assault.

Marriages Are Falling Off.

Indianapolis, April 10.—Figures gathered by the Indiana bureau of statistics show that marriages are falling off in Indiana and divorces are increasing. In the year 1908 there were 2,814 fewer marriages than in the previous year and at the same time there were 120 more divorces granted.

State Guaranty for Wichita Bank.

Wichita, Kan., April 10.—At the quarterly meeting of the board of directors of the State Savings bank, it was decided that hereafter depositors and customers should be given the benefit of the state bank guaranty law. An application has been made to State Bank Commissioner Dooley, asking that the necessary blanks be furnished and that an examination be made of the bank as soon as possible in

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